



Neutral Citation Number: [2020] EWHC 167 (Ch)

Case No: PT-2019-000647

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE (ChD)**

Rolls Building  
7 Rolls Buildings  
Fetter Lane, London  
EC4A 1NL

Date: 06/02/2020

**Before :**

**MR ASHLEY GREENBANK**  
**SITTING AS A DEPUTY JUDGE OF THE HIGH COURT**

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**Between :**

**(1) BERNARD PANTON**  
**(2) NORMAN WILKINS**

**Claimants**

**- and -**

**(1) VALE OF WHITE HORSE DISTRICT**  
**COUNCIL**  
**(2) MARGARET REED**

**Defendants**

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**Mr Bernard Panton**, in person, acting on his own behalf and on behalf of the **Second Claimant**  
**Mr Matt Lewin**, counsel (instructed by **Sharpe Pritchard LLP**) for the **Defendants**

Hearing dates: 21 January 2020  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR ASHLEY GREENBANK

## **Mr Ashley Greenbank, sitting as a Deputy Judge of the High Court**

### **Introduction**

1. These are applications by the defendants, the Vale of White Horse District Council (the “council”) and Mrs Margaret Reed, to strike out a claim of the claimants, Mr Bernard Panton and Mr Norman Wilkins, under rule 3.4(2) of the Civil Procedure Rules (“CPR”) or for summary judgment on the claim under CPR rule 24 and, if successful, for extended civil restraint orders (“ECRO”) against both claimants under CPR rule 3.11 and Practice Direction 3C (“PD 3C”).

### **Background**

2. The claim in this case is the latest in a series of claims brought by the claimants which relate to the ownership of the village hall (the “Hall”) in Denchworth in Oxfordshire.

#### *The relationship between the parties*

3. Mr Panton and Mr Wilkins are respectively the former treasurer and former chairman of the Denchworth Parish Meeting. The Denchworth Parish Meeting is a local authority comprised of the local electors of Denchworth (s9(1) and s13(1) of the Local Government Act 1972 (“LGA 1972”).
4. The chairman of the Parish Meeting and the proper officer of the Parish Meeting’s principal authority together comprise a body corporate, which is known as the Parish Trustees (s13(3) LGA 1972). The council is Denchworth Parish Meeting’s principal authority and Mrs Reed is currently the proper officer of the council for the purposes of LGA 1972.

#### *The ownership of the Hall*

5. The dispute between the parties concerns the ownership of the Hall. I have set out below a brief history of the transactions concerning the ownership of the Hall. These facts are largely undisputed notwithstanding that there remains considerable dispute between the parties as to the legal effect of these transactions.
6. The Hall was constructed in the 1930s. It was donated to the parish by a local landowner. At some point in the 1980s, there was some concern in the parish that the ownership of the Hall was not properly documented. At the direction of a Parish Meeting held on 29 May 1991, the then Parish Trustees - a Dr Myatt, the then chairman of the Parish Meeting, and a Mr Heavers, the then proper officer of the council - applied for first registration of the Hall on the basis of adverse possession. The application was accepted. The Parish Trustees were registered as the holders of the legal title to the Hall on 26 June 1992.

7. Shortly before the title to the Hall was registered in their names, on 16 June 1992, the Parish Trustees executed a trust deed, the deed recited that:

“At the Denchworth Parish Meeting held on Wednesday 29 May 1991, it was resolved that the property described in the schedule (which is the village hall land) should be vested in the Trustees upon the trusts of these presents, and that the trustees should make the declaration of trust contained below.”

The second recital contained the terms of the trust. It read:

“The property has been duly vested in the Trustees for the purposes of a village hall for the use of the inhabitants of the parish of Denchworth which is the area of benefit, without distinction of political, religious or other opinions, including use for meetings, lectures and classes and for other forms of recreational and leisure time occupation, with the object of improving the conditions of life for the said inhabitants.”

8. In 2001, the management committee of the Hall applied for charitable status as the “Denchworth Village Hall Fund” (the “Fund”). Four individuals became the “Holding Trustees” of the Fund.
9. In 2003, the then Parish Trustees (which did not include Mrs Reed) executed an instrument of transfer to transfer the legal title to the Hall to the Holding Trustees. The legal title to the Hall was registered in the names of the Holding Trustees.
10. In 2016, an application was made to transfer legal title to the Hall to the Official Custodian for Charities. On 16 June 2016, a vesting order was made vesting title to the Hall in the Official Custodian on behalf of the Fund.

#### *The origins of the current dispute*

11. In 2013, Mr Panton was elected treasurer and Mr Wilkins was elected chairman of the Parish Meeting. In 2015, Mr Panton complained to the council about the ownership of the Hall. In 2016, he complained to the Parish Trustees about the ownership of the Hall. The Parish Trustees commissioned advice from a local solicitor. Following the receipt of that advice, in a letter dated 12 September 2016, the Parish Trustees advised Mr Panton that the Hall had been held on charitable trusts since 1992 and that the ownership of the Hall was “secure”.

#### **The earlier proceedings**

##### *The judicial review proceedings*

12. In December 2016, Mr Panton made an application for judicial review of the Parish Trustees’ letter of 12 September 2016. The defendants in those proceedings were the Parish Trustees (who now included Mrs Reed as the proper officer of the council). The Fund was an

interested party. Mr Wilkins was not a party to the application but filed a witness statement in support of it.

13. The Detailed Statement of Grounds incorporated in the claim form asserted that the Parish Trustees “misdirected themselves and so caused themselves effectively to deny that [the Holding Trustees]... hold the [Hall] upon trust in such manner as the Parish Meeting shall direct”.
14. Permission to apply for judicial review was refused on the papers by an order of Robin Purchas QC (sitting as a Deputy High Court Judge) dated 31 January 2017 on the basis that: the letter did not constitute a decision or other exercise of a public function which was amenable to judicial review; the claim related to the transfer of the title to the Hall in 2003 and was considerably out of time; and there was insufficient evidence that that transfer was made without the consent of the Parish Meeting (and so in breach of s127 LGA 1972).
15. Following an oral renewal hearing, permission to apply for judicial review was refused by an order of Leigh-Ann Mulcahy QC (sitting as a Deputy High Court Judge) dated 14 March 2017 for essentially the same reasons. The judge’s decision has neutral citation number [2016] EWHC 3751 (Admin).
16. Permission to appeal to the Court of Appeal was refused by Simon LJ in an order dated 10 January 2018. Simon LJ’s reasons for refusing permission to appeal stated that the judge’s reasons for refusing permission were “plainly correct”. Simon LJ also commented that he was “wholly unpersuaded” that the appeal had any prospect of success.

*The Chancery Division proceedings*

17. In April 2018, Mr Panton and Mr Wilkins issued a claim in the Chancery Division alleging various breaches of trust by the Parish Trustees and seeking a declaration that the equitable interest in the Hall remained held for the benefit of the Parish Meeting. The defendants were the Parish Trustees (who again included Mrs Reed as the proper officer of the council) and the council.
18. The Particulars of Claim included the assertion (at paragraph 46) that “Mrs Reed... and the Parish Trustees of the Parish of Denchworth breached section 1 of the Trustee Act 2000 in that they knowingly and falsely: (i) denied and continue to deny that the Parish Trustees hold [the Hall] on trust for the Denchworth Parish Meeting and (ii) asserted that [the Hall], of which the registered proprietors are [the Holding Trustees], is held for the Denchworth Village Hall Fund”.
19. Following a hearing, the claim was struck out by an order of Penelope Reed QC (sitting as a Deputy High Court Judge) dated 20 November 2018 under CPR rule 3.4(2)(a) because there were no reasonable grounds for bringing the claim. The decision has neutral citation number [2018] EWHC 3185 (Ch).
20. In reaching that decision, Penelope Reed QC found that when they acquired title in 1992, the Parish Trustees held the property on trust for the purpose of providing a village hall for the

residents of Denchworth; that was a charitable purpose in accordance with the Recreational Charities Act 1958; and it was irrelevant that the charity was not registered until later (see [25]). She also held that when the property came to be held by new trustees in 2003, the trusts on which Holding Trustees held the property were the same (see [27] and [29]). The judge also commented that she “did not see how Mr Panton or Mr Wilkins’s argument has any merit, or that either of them, as electors of the parish of Denchworth, have any standing to bring these proceedings” (see [26]).

21. Mr Panton and Mr Wilkins applied for permission to appeal. Penelope Reed QC refused permission. She gave her reasons as “The claim disclosed no cause of action and there is no real prospect of an appeal against that succeeding.”
22. Mr Panton and Mr Wilkins filed an appellants’ notice on 18 December 2018 seeking permission to appeal to the Court of Appeal. Permission was refused by an order of Floyd LJ on 28 January 2019. Floyd LJ described the judge’s conclusions as “plainly right” and he commented that “the applicants had no relevant interest to bring this claim”.

### **The current proceedings**

23. The claim in this case was issued on 7 August 2019. In summary, Mr Panton and Mr Wilkins assert that (i) Mrs Reed acted ultra vires to challenge the claims in the judicial review proceedings and the Chancery Division proceedings and (ii) those proceedings were defeated as a result of untrue allegations and submissions made by Mrs Reed which caused loss and damage to Mr Panton and Mr Wilkins for which the council is vicariously liable. They claim an aggregate sum of £11,538, most of which comprises costs which they have been ordered to pay (but have not paid) in relation to earlier proceedings and related court fees.
24. The particulars of Mr Panton and Mr Wilkins’s claim are lengthy and detailed but, in essence, they say that:
  - (1) when the Parish Trustees acquired the Hall in 1992 they did so on trust for the benefit of the Parish Meeting;
  - (2) the equitable interest in the property has not changed and, in particular, the purported transfer to the Holding Trustees in 2003 was, if anything, a transfer of the legal title only;
  - (3) in her capacity as a Parish Trustee, Mrs Reed was only entitled to act either at the direction of the Parish Meeting or on her own initiative to protect parish property (s13(4) LGA 1972 and per Sir Denys Buckley in *The Parish Trustees of the Parish of Askerswell v John Masefield* [1986] EWCA (Civ) J0520-6); [1987] 85 LGR 108;
  - (4) Mrs Reed therefore acted ultra vires her position as a Parish Trustee, when without the authority of the Parish Meeting, she instructed solicitors and counsel to challenge the judicial review proceedings and the Chancery Division proceedings;

- (5) Mrs Reed acted in breach of trust in various ways (including making false statements to the courts) which resulted in the courts reaching the conclusions that the Parish Meeting had consented to the transfer of the title to the Hall to Holding Trustees in 2003, that the beneficial interest in the Hall was transferred to the Holding Trustees and that the Hall was held on charitable trusts and, in this endeavour, Mrs Reed colluded with the council and legal counsel to mislead the court;
- (6) these actions have caused loss and damage to Mr Panton and Mr Wilkins.

### **Other relevant facts**

25. In addition to the claims and applications that have been made through the courts, Mr Panton has pursued the issue of the ownership of the Hall through various other avenues.
26. On 4 February 2019, Mr Panton made an application to the Charity Commission for the order vesting the title to the Hall in the Official Custodian to be declared void on the grounds that the order was made on the basis of a declaration by a Mr Brandon (the then chairman of the Fund) who was not a registered proprietor of title to the Hall and in that declaration Mr Brandon asserted that the Hall was held on behalf of the Fund. Mr Panton asserted that this was a false declaration.
27. On 20 August 2019, the Charity Commission wrote to the trustees of the Fund stating that in their view the Hall was held on “the recreational trusts set out in the Trust Deed dated 16 June 1992”. (This view is of course not inconsistent with decision of Penelope Reed QC in the Chancery Division proceedings.) The Commission noted that there may have been some technical irregularities in the transfer which took place in 2003 but that it was “likely to be possible for the Parish Meeting to enter into a deed or other document to ratify the action that took place in 2003 and deal with any irregularities”. The Commission advised the trustees of the Fund to take advice to resolve the issues.
28. Mr Panton has had subsequent correspondence with the Commission on the effect of the purported transfer of the title to the Hall to the Holding Trustees in 2003.
29. On 2 September 2019, Mr Panton and Mr Wilkins wrote to the Attorney-General's office claiming that the Parish Trustees, as custodian trustees, had acted in breach of trust in failing to protect the title to the Hall that was in their trust and repeating many of the assertions that are made in the current proceedings. Mr Panton and Mr Wilkins requested that the Attorney-General exercise his powers to protect the local government electors from the conduct of the Parish Trustees.
30. Mr Panton has also made various other allegations against those participating in the earlier proceedings and the individuals who are currently engaged in the management of the village hall.
- (1) Following the judicial review proceedings, Mr Panton wrote to the defendants' solicitors claiming that counsel for the defendants had engaged in “a dishonest attempt to mislead

the court”. He also wrote to counsel’s chambers asking the head of chambers to investigate these matters.

- (2) Following the Chancery Division proceedings, Mr Panton wrote to the council to complain about the actions of Mrs Reed. The council rejected Mr Panton’s allegations that Mrs Reed had lied to the court.
- (3) In June 2019, Mr Panton wrote to the trustees of the Fund drawing to their attention a decision of the Court of Appeal which had appeared in the press (which I take to be a reference to the Court of Appeal decision in *Liverpool Victoria Insurance Company v Zafar* [2019] EWCA Civ 392, [2009] 1 WLR 3833); the clear implication being that the trustees should face imprisonment for making false statements in documents that are to be used in court proceedings.

### **The application to strike out the claim (CPR rule 3.4(2))**

31. The defendants have applied to strike out the claim and/or for summary judgment. The circumstances in which the court can strike out a claim are set out in CPR rule 3.4(2). It provides:

- (2) The court may strike out a statement of case if it appears to the court—
  - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
  - (b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or
  - (c) that there has been a failure to comply with a rule, practice direction or court order.

Sub-paragraph (c) is not relevant in this case.

### ***Abuse of process***

#### *The parties’ submissions*

32. Mr Lewin, for the defendants, submits that the claim is an abuse of process and should be struck out under CPR rule 3.4(2)(b). He makes the following arguments in support of that submission.

- (1) First, he says that the claim is an attempt to re-litigate matters which have been determined in the earlier proceedings. The central claim in the current proceedings is that Mrs Reed denied that title to the Hall was held by the Parish Trustees for the benefit of the Parish Meeting and asserted that title was held by the Fund for charitable purposes. That claim was made both in Mr Panton’s Detailed Statement of Grounds in the judicial review proceedings and in Mr Panton and Mr Wilkins’s particulars of claim in the Chancery Division proceedings. It was rejected by Robin Purchas QC in the judicial review proceedings and by Penelope Reed QC in the Chancery Division proceedings.

(2) Second, there are various points in the particulars of claim for these proceedings at which it is explicit that the claim does little more than re-open issues which have been decided in the earlier proceedings. Mr Lewin refers, in particular, to allegations that the judges in the earlier proceedings were misled in their conclusions by false submissions made by Mrs Reed, counsel for the defendants and others.

(3) Third, the fact that the bulk of the damages claimed by Mr Panton and Mr Wilkins relates to costs incurred in bringing the earlier unsuccessful claims demonstrates the abusive nature of the claim.

33. Mr Panton in response recited much of the history of the ownership of the Hall since 1992 and the earlier proceedings. He asserted that Mrs Reed in denying her trusteeship of the Hall, in supporting the claim of the Fund to an interest in the Hall, in opposing the claims brought by him and Mr Wilkins and in making a false statement to the effect that the Parish Meeting had consented to the transfer of the title to the Hall in 2003 had committed acts of misfeasance in a public office.

34. Mr Panton argued that he should be permitted to bring evidence in support of his allegations that the earlier decisions were based on false submissions or an incorrect understanding of the facts. The current proceedings were not an attempt to re-litigate these issues; he accepted that he could no longer challenge the decisions relating to the ownership of the Hall. He and Mr Wilkins, however, claimed damages which had arisen from the wrongful and ultra vires acts of Mrs Reed. It was not possible to make those claims without reference to the issues that had arisen in the earlier proceedings.

### *Discussion*

35. It is well-established that seeking to re-litigate issues which have already been determined by a court or tribunal may be an abuse of process. This may be on the formal grounds, such as those of a cause of action estoppel or an issue estoppel, or on the exercise of the court's inherent jurisdiction to prevent similar issues being tried repeatedly before different courts and tribunals.

36. I did not understand Mr Lewin to base his argument on any form of estoppel. It may, in any event, have proved difficult for him to do so in this case given the nature of the earlier decisions. There is authority that judicial review proceedings cannot give rise to an issue estoppel (*R v Secretary of State ex parte Hackney London Borough Council* [1983] 1 WLR 524). The Chancery Division proceedings were determined by an order to strike out Mr Panton and Mr Wilkins's claim on the grounds that there were no reasonable grounds for bringing the claim (within CPR rule 3.4(2)(a)). That order was made on the basis of the strength of the arguments in support of the claim and so cannot be regarded as a final determination of the issues sufficient to found an issue estoppel (*Autofocus Ltd v Accident Exchange Ltd* [2010] EWCA Civ 788).

37. Mr Lewin framed his argument in terms of the current proceedings being a collateral attack on the earlier decisions of the courts. Those principles have been applied to prior decisions involving final determinations of competent courts (*Secretary of State for Trade and Industry v Birstow* [2003] EWCA Civ 321, [2004] Ch 1) and to judicial review proceedings (see *Eco-Power UK Ltd v Transport for London* [2010] EWHC 1863 (Admin), [2010] AC 69



(“*Eco-Power*”). Mr Lewin did not refer me to any authority in which such principles had been applied where the relevant prior decision was an order to strike out a claim, however, given that the basis of those decisions is the inherent jurisdiction of the court to prevent similar issues being tried repeatedly before different courts and tribunals (*Eco-Power*: [21]), I can see no logical reason why, in appropriate circumstances, it should not do so.

38. In the present case, in my view, the claim amounts to an abuse of process.

- (1) The particulars of claim are based on fundamentally the same facts as the earlier proceedings with the addition of reference to the earlier proceedings themselves and some subsequent correspondence with the Charity Commission and the Attorney-General's office.
- (2) The same underlying complaint – that the Parish Trustees have denied that they hold title to the Hall for the benefit of the Parish Meeting – is central to the claims in each set of proceedings.
- (3) The allegations made against Mrs Reed in the current proceedings – that she acted ultra vires her position as Parish Trustee and has made false submissions to the court – relate either to matters that were in evidence before the courts in the earlier proceedings or to submissions made to the courts which the courts considered in reaching their decisions in the earlier proceedings.
- (4) There is no fresh evidence on which Mr Panton relies other than the correspondence with the Charity Commission and the Attorney-General's office (which largely recite matters that were before the courts in the earlier proceedings). In particular, Mr Panton was not proposing to present any further evidence of bad faith on the part of any of the participants, including Mrs Reed, other than the fact that they disagreed with the views of Mr Panton and Mr Wilkins.
- (5) Although Mr Panton says that he does not seek to challenge either of the earlier decisions, any decision in his and Mr Wilkins's favour in the current proceedings would implicitly contradict them and the findings in them – in particular, the decision in the Chancery Division proceedings.
- (6) Mr Panton asserts that he is making a separate claim for damages in relation to the actions of Mrs Reed and the council in relation to matters involving the Hall. However, the claim for damages is for a sum determined primarily by reference to costs awarded against Mr Panton and Mr Wilkins in relation to the earlier proceedings and related court costs, which they have not yet paid. It is in substance an attempt to reverse the orders for costs in the earlier proceedings.

39. Mr Panton and Mr Wilkins's claim amounts to an attempt to undermine the previous decisions of the courts. In my view, that is an abuse of process. The appropriate means to challenge those decisions was by appeal. The claimants had their opportunity to appeal, but, in each case, permission was refused.

40. I should address Mr Panton's point that it is important for him to be able to bring forward evidence and to make assertions made in the earlier proceedings in order to establish his

claim that Mrs Reed has acted unlawfully and the courts have made their decisions on the basis of false submissions. As I have mentioned above, the particulars of claim and Mr Panton's arguments before me essentially repeated allegations that must be regarded as having been considered and rejected as part of the earlier proceedings. If Mr Panton and Mr Wilkins had been proposing to adduce fresh evidence of misfeasance the position may have been different.

### *Conclusions*

41. For these reasons, I will order the claim to be struck out under CPR rule 3.4(2)(b).
42. I also have to consider whether the claim should be certified as being totally without merit (CPR rule 3.4(6)(a)). For these purposes, a claim is totally without merit if it is bound to fail, in the sense that there is no rational basis on which it could succeed (*R (Grace) v Secretary of State for the Home Department* [2014] EWCA Civ 1091, [2014] 1 WLR 3432, and *R (W) v Secretary of State for the Home Department* [2016] 1 WLR 2793, [2016] EWCA Civ 82). In my view, the claim was totally without merit and I will certify the order accordingly.

### *No reasonable grounds for bringing this claim*

43. Mr Lewin relied primarily on his submissions on CPR rule 3.4(2)(b) in support of his application to strike out this claim. He also submitted, in the alternative, that the claim should be struck out under CPR rule 3.4(2)(a) because there were no reasonable grounds for bringing this claim.
44. Mr Lewin submits that the claim does not disclose any cause of action for damages as a matter of private law. He says that the claims that Mrs Reed's actions were ultra vires and for breach of trust relate to the exercise by the Parish Trustees of their statutory powers under LGA 1972. Those matters are matters of public law and should be challenged, if at all, by judicial review.
45. As a result of my decision on the application of CPR rule 3.4(2)(b), it is not necessary for me to address this separate ground, but I will comment on it briefly. In short, I do not accept Mr Lewin's submission entirely. If Mr Panton could make out his case, then it might be possible for him to bring an action for misfeasance in a public office. That would however require Mr Panton to show an element of bad faith. That is a high hurdle and I can see no evidence of bad faith before me. Much of the evidence to which Mr Panton points is the fact that others - including Mrs Reed - have reached different and opposing views to his own of the legal effect of the various transactions. The facts are complicated and there may be different

genuinely held views of their legal effect but a difference of view alone, whether or not it is correct, does not amount to bad faith.

46. For these reasons, I would also have struck out this claim under CPR rule 3.4(2)(a) on the grounds that there were no reasonable grounds for bringing this claim.

### **The application for summary judgment (CPR rule 24(2))**

47. I propose to strike out this claim in its entirety under CPR rule 3.4(2)(b). I do not need to consider further whether there is also jurisdiction to order summary judgment under CPR rule 24(2).

### **The application for a civil restraint order (CPR rule 3.11)**

48. The defendants have also applied for an ECRO against both Mr Panton and Mr Wilkins. As I have found that the current claim is totally without merit, I am in any event required to consider whether it is appropriate to make a civil restraint order (CPR rule 3.4(6)(b)).

49. The court has power to make civil restraint orders by CPR rule 3.11 and PD 3C. There are three kinds of civil restraint order: a limited civil restraint order, which restrains a party from making further applications in the current proceedings; an extended civil restraint order (ECRO), which restrains a party from issuing particular claims or making particular applications in specified courts; and a general civil restraint order, which restrains a party from issuing any claims or making any applications in specified courts.

### ***Practice Direction 3C***

50. The circumstances in which the court may make an ECRO are set out in paragraph 3.1 of PD 3C. It provides:

#### **3.1**

An extended civil restraint order may be made by—

- (1) a judge of the Court of Appeal;
- (2) a judge of the High Court; or
- (3) a Designated Civil Judge or their appointed deputy in the County Court,

where a party has persistently issued claims or made applications which are totally without merit.

51. Paragraph 3.2 PD 3C provides that, if an order is made by a judge of the High Court, the party against whom the order is made will be restrained from issuing claims or making applications in the High Court or the County Court. An order may be made for a maximum of two years (paragraph 3.9(a) PD 3C).

52. An ECRO can therefore only be made against a person who has persistently issued claims or made applications which are totally without merit. As I have mentioned above, a claim or application is “totally without merit” if it is bound to fail in the sense that there is no rational basis on which it could succeed.
53. As regards the meaning of “persistently” in this context, given that at least two claims or applications which are totally without merit are required before a limited civil restraint order can be made (paragraph 2.1 PD 3C), “persistence” requires a minimum of three such claims or applications before an ECRO can be made. Furthermore, even if three such claims or applications have been made, the question remains whether a party is acting “persistently”. This question requires an evaluation of the party’s overall conduct (*Sartipy v Tigris Industries Inc.* [2019] EWCA (Civ) 225, [2019] 1 WLR 5892 (“*Sartipy*”) per Males LJ at [28] and [30]).
54. CPR rules 3.3(7), 3.4(6) and 23.12 provide that where a statement of case or application is struck out or dismissed and is totally without merit the court must specify that fact. However, the absence of such a certification on the face of an earlier order does not prevent a court which is considering whether or not it has jurisdiction to make a civil restraint order from treating an earlier claim or application as being totally without merit. It may still do so, if it is convinced that the earlier statement of case or application must have been treated as being totally without merit. But, if the earlier order does not speak for itself a rather more detailed examination of the earlier litigation history must be undertaken if a court is to be satisfied that it has the requisite jurisdiction (*R (Kumar) v Secretary of State for Constitutional Affairs* [2006] EWCA Civ 990, [2007] 1 WLR 536 at [67] and [68]).
55. If the pre-conditions for the making of an ECRO are satisfied, it does not necessarily follow that one should be made. The court has a discretion in this respect which must be exercised in a proportionate manner. In *Re Ludlam (a bankrupt)* [2009] EWHC 2067 (Ch) (“*Ludlam*”), the judge (Edward Bartley Jones QC, sitting as a Deputy High Court Judge) considered that the most important question in the exercise of this discretion was the “threat level” of the continued use of wholly unmeritorious applications or claims. The question to be asked was will the litigant continue with an irrational refusal to take “no” for an answer? (*Ludlam* [14]).

### ***The parties’ submissions***

56. Mr Lewin made the following submissions:

- (1) On the assumption that the claim in these proceedings was struck out, a limited civil restraint order would not be appropriate in this case.
- (2) Claims and applications made in the course of the proceedings initiated by the claim should be counted separately for the purposes of evaluating the pre-conditions for the issue of an ECRO (*Sartipy* [29]). This should also extend to applications to appeal against orders made by the court refusing an application made by the claimant and applications to appeal against orders to strike out a claim.
- (3) An order should be made against both Mr Panton and Mr Wilkins. Although Mr Wilkins was not a party to the judicial review proceedings he should be regarded as a “real party” to the proceedings (*Sartipy* [32]). He had filed a witness statement and was closely

involved in the proceedings. If the application for permission to apply for judicial review and the related applications were totally without merit, Mr Wilkins should also bear the consequences.

- (4) In the course of the earlier proceedings, six claims or applications had been made that were totally without merit.
- (a) The application for permission to apply for judicial review was seeking to challenge letters containing an expression of opinion in relation to a transaction that had occurred 14 years before. The letters did not even arguably constitute a decision or other exercise of a public function subject to judicial review and the application was considerably out of time. There was no rational basis on which the application could have succeeded.
  - (b) The application to seek permission at an oral hearing to renew the application for judicial review, which itself was made on grounds that were totally without merit.
  - (c) The application for permission to appeal against the refusal of permission to apply for judicial review was also totally without merit. This was reflected in the emphatic terms in which Simon LJ refused the application.
  - (d) The claim in the Chancery Division proceedings was also totally without merit. Penelope Reed QC described the claimants' argument as without "any merit" and commented that she "struggled" to see what standing Mr Panton or Mr Wilkins had to bring the claim.
  - (e) The application for permission to appeal against the decision to strike out the claim was totally without merit and was rejected Penelope Reed QC.
  - (f) The further application to the Court of Appeal for permission to appeal was also totally without merit. It was rejected by Floyd LJ in emphatic terms.

If the existing claim was found to be without merit, it should be added to this list.

- (5) An ECRO was proportionate in this case. Mr Panton and Mr Wilkins had shown no willingness to accept the decisions of the courts and without an order were likely to continue to make unmeritorious claims. Mr Lewin pointed to the following matters in support of this submission.
- (a) Mr Panton had stated in correspondence to the defendants' solicitors that "Nothing [you] say is going to persuade me otherwise than the Trustees did not dispose of the equitable interest in the Hall".
  - (b) Mr Panton and Mr Wilkins had continued to petition the Charity Commission and the Attorney-General's office about the ownership of the Hall.
  - (c) Mr Panton and Mr Wilkins had accused counsel for the defendants and the defendants' solicitors of misleading the court.

- (d) Mr Panton and Mr Wilkins had threatened to report counsel to the Bar Council and complained to his chambers.
- (e) Mr Panton and Mr Wilkins had continued to make accusations of dishonesty and misfeasance against various members of the local community who were involved in the management of the Hall.

57. Mr Panton made the following points in response.

- (1) He questioned the way Mr Lewin counted the number of claims and applications which were relevant for the purpose of meeting the conditions for the issue of an ECRO. He did not articulate this point fully, but I took him to question whether the applications for permission to appeal against orders of the court denying his initial applications should also be counted as separate applications.
- (2) The claimants' persistence was justified by the circumstances: the allegations of wrong doing were serious and required the intervention of the courts.
- (3) He assured the court that he had no intention of taking further proceedings regarding the ownership of the Hall after the current claim. There were no other proceedings that he could bring. He had given up hope of persuading others that his view was correct other than the Charities Commission, who seemed to accept in their latest correspondence that there was possibility that the transfer to vest the legal title to the Hall in the official custodian.
- (4) All he was seeking in the current proceedings was compensation for the damage that he and Mr Wilkins had suffered because of the actions of actions of Mrs Reed.

### *Discussion*

58. The pre-conditions for the issue of an ECRO are that the relevant party has persistently issued claims or made applications which are totally without merit (PD 3.1). At least three such claims or applications are required before an ECRO can be made.

### *Relevant claims and applications*

59. I will start by determining which are the relevant claims and applications. Mr Lewin suggested that all six of the claims and applications to which I have referred at [56(4)] above should be taken into account. Mr Panton questioned that approach.

60. The only authority to which I have been referred on this issue is *Sartipy*. In his judgment in that case, Males LJ says this (at [29]):

“29. First, "claim" refers to the proceedings begun by the issue of a claim form. In the course of those proceedings one or more applications may be issued. If the claim itself is totally without merit and if individual applications are also totally

without merit, there is no reason why both the claim and individual applications should not be counted for the purpose of considering whether to make an ECRO.”

It is therefore clear that not only a particular claim, but also individual applications which form part of the process of prosecuting that claim, that can be taken into account separately in determining whether the minimum of three claims or applications which are totally without merit has been met.

61. Furthermore, an application to appeal an order of the court can be regarded as a separate application for this purpose from the original application which gave rise to the order. This is clear from the judgment of Newey J in *CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch), [2017] 1 WLR 4589 (“*CFC 26*”) (to which Males LJ refers with approval in *Sartipy* at [28]). At [21] in *CFC 26*, Newey J lists the applications which he takes into account in considering whether or not the court had jurisdiction to make an ECRO. These include applications to appeal against previous orders.
62. I should therefore take into account not only the original claims and applications listed at [56(4)] above but also the appeals against orders of the court made in response to them. That leaves open a question as to whether I should regard the application for an oral hearing to renew the application for judicial review ([56(4)(b)] above) as distinct and separate from the original application and the applications for permission to appeal against the order to strike out the claim in the Chancery Division proceedings to both the High Court and the Court of Appeal ([56(4)(e)] and [56(4)(f)] above) as separate applications for this purpose. To my mind, I should do so. The purpose of these orders is to prevent the pursuit of litigation which is without merit absorbing the time and resources of the courts and other parties. If it is clear that a step in the litigation process is regarded as totally without merit then I see no reason why it is not appropriate to have regard to a further step which that party takes, which is also regarded as bound to fail, in determining whether the court has power to make an ECRO. In reaching that conclusion, I take into account that this is merely for the purpose of determining whether the court has power to make an ECRO. It does not absolve the court from consideration of the question as to whether an ECRO would be appropriate in all the circumstances.

*Claims and applications which are “totally without merit”*

63. As I have mentioned above, in this case, none of the previous orders of the courts in the earlier proceedings specifies on its face that the claim or application was totally without merit. The only order that will record on its face that the relevant application was totally without merit is the order which I propose to make in this case to strike out the current claim. However, I may still have the power to make an ECRO if there are claims or applications, which have been made as part of the earlier proceedings and which must have been treated as being totally without merit.
64. I therefore need to determine whether it is clear from the legislative history that a sufficient number of relevant claims and applications were totally without merit, that is that they were bound to fail, in the sense that in the sense that there was no rational basis on which they could succeed.

65. The initial application for permission to apply for judicial review in the judicial proceedings was, in my view, clearly misconceived. It was bound to fail. It was clear that Robin Purchas QC regarded the claim as totally without merit. There was no decision or other exercise of a public function to which judicial review might be relevant and to the extent that the application related to the transfer of title to the Hall to the Holding Trustees in 2003, the application was considerably out of time.
66. It should follow that the application for an oral renewal hearing was equally misconceived and bound to fail. The application for permission to appeal to the Court of Appeal was also bound to fail. Simon LJ's reasons for refusing appeal were particularly emphatic.
67. Even though the order to strike out the Chancery Division proceedings was not certified as required by CPR rule 3.4(6) I am convinced that Penelope Reed QC regarded the claim in the Chancery Division proceedings as totally without merit. She referred to the claim as not having "any merit" (at [26]). Her reasons for refusing the application for permission to appeal demonstrated that she would put that application in the same category, as would Floyd LJ who dismissed the application for permission to appeal to the Court of Appeal in equally summary terms.
68. For these reasons I regard all the applications and claims to which Mr Lewin refers as bound to fail. That is a total of seven claims or applications which, in my view, were totally without merit if I include the claim in these proceedings.

*A party to a claim or application*

69. Mr Lewin argued before me that Mr Wilkins should be regarded as a relevant party to all of the claims and applications even though he was not a named party to the judicial review proceedings.
70. Under paragraph 3.1 of PD 3C, the court may make an ECRO where "a party" has persistently issued unmeritorious claims or applications. Although it is accepted that the reference in paragraph 3.1 of PD 3C to a "party who has issued" a claim or application can extend to a person who is not the named party but who is nevertheless a "real party" in the sense of a person who is controlling the conduct of proceedings and who has a significant interest in their outcome (*Sartipy* [32], *CFC 26* [20]), I would not regard Mr Wilkins as falling into that category. He gave a witness statement to support the application for permission to apply for a judicial review. He was not a named party and there is no evidence that he was controlling the proceedings. The evidence is rather to the contrary and that it is Mr Panton who was the major influence in the conduct of the proceedings. Given the clear words of PD 3C, in my view, it would be inappropriate to extend its scope to other participants in proceedings who are not clearly acting as if they were a party. I do not therefore regard Mr Wilkins as having been a "party" to the judicial review proceedings.
71. The point is, however, not relevant to the question of whether three or more unmeritorious claims or applications have been made in order to enable an ECRO to be made against Mr Wilkins. Mr Wilkins was a named party to the Chancery Division proceedings and there are enough unmeritorious claims and applications made within those proceedings and the current proceedings to reach the minimum required to support the making of an ECRO against him.



However, the question may be relevant to the issues of persistence and proportionality, which I address below.

*Persistence and proportionality*

72. It follows from my conclusions on the applications that have been made totally without merit that both Mr Panton and Mr Wilkins have made at least the minimum of three unmeritorious claims which must be made before the court can issue an ECRO against them. As I have mentioned above, that is, however, not the end of the matter. The question remains whether Mr Panton and Mr Wilkins were acting persistently. That requires an assessment of their overall conduct. Males LJ put it in these terms in *Sartipy* (at [30]).

“30. Second, although at least three claims or applications are the minimum required for the making of an ECRO, the question remains whether the party concerned is acting "persistently". That will require an evaluation of the party's overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence.”

73. As regards Mr Panton, I am satisfied that he has “persistently” issued claims and applications which are totally without merit. The claims and applications that he has made in the courts over the past few years have been unremitting. Each reversal has been rapidly followed by the issue of a further claim or an application for permission to appeal or for an oral hearing. The same is to an extent true in the case of Mr Wilkins, although he was not, of course, a party to the judicial review proceedings.

74. I am also required to consider whether it would be proportionate to issue an ECRO in this case. In doing so I also take into account other aspects of Mr Panton and Mr Wilkins’s conduct.

75. Mr Panton has made repeated allegations of malfeasance or misconduct against Mrs Reed and the members of the community currently involved in the management of the Hall. He has threatened to report counsel for the defendants to the Bar Council for what would appear to be unsubstantiated allegations of misleading the court. He has continued his crusade through correspondence with the Attorney-General's office and the Charity Commission. Notwithstanding his assurances, in my view, the risk that he may bring further unmeritorious claims in the courts is high. For these reasons, I propose to make an ECRO against Mr Panton for the full permitted period of two years.

76. Mr Wilkins has been a party to both the Chancery Division proceedings and the current proceedings. He provided a witness statement in support of the judicial review proceedings. He was also a signatory to the letter to the Attorney-General’s office. However, it is clear from the surrounding circumstances that Mr Panton is the prime mover in this campaign. Mr Wilkins was not a party to the judicial review proceedings and he is not a party to the chains of correspondence to which I have been referred in which Mr Panton raises issues with the Charity Commission or threatens further action against counsel or members of the

community who are involved in the running of the hall. For these reasons, I do not propose to make an ECRO against Mr Wilkins.

77. That leaves open the possibility that Mr Wilkins may choose to continue his and Mr Panton's campaign through further unmeritorious claims and applications in the courts on his own. I have seen no evidence that persuades me that he is likely to do so on his own initiative and so do not regard that risk as high.

### *Conclusion*

78. I will make an ECRO against Mr Panton restraining Mr Panton for a period of two years from issuing claims or making applications in the High Court or the County Court concerning any matter involving or relating to or touching upon or leading to these proceedings without first obtaining permission.

79. I will make no order against Mr Wilkins.